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December 11, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petition for Order Declaring Mid-Rivers Telephone
Cooperative, Inc. an Incumbent Local Exchange
Carrier in Terry, MT, WC Doc. No. 02-78; Federal
State Joint Board on Universal Service, CC Doc. No.
96-45
Ex Parte Presentation

Dear Ms. Dortch:

On December 10, 2002 Gerry Anderson and I, representing Mid-Rivers Telephone Cooperative, met with Commissioner Martin and Dan Gonzales to discuss Mid Rivers' pending petition. In the course of the discussions, the attached paper was used to explain Mid-Rivers's position on the issues raised by parties in this proceeding. In addition, the attached summaries of USF payments to competitive carriers were provided.

Please contact me if there are any questions in regard to this matter. An original and one copy are provided for each docket pursuant to Section 1.1206(b) of the Commission's rules.

Sincerely yours,


David Cosson

Attachments

cc: Ian Dillner
Paul Gamett
Nese Guendelsberger
Ann Stevens

MID-RIVERS TELEPHONE COOPERATIVE
SECTION 251(h) PETITION, TERRY, MT
WC DOC. NO. 02-78

Filed: February 15, 2002

Public Notice: April 19, 2002

Comments/Replies Complete: May 15, 2002

Summary:

Mid-Rivers provides ILEC and CLEC service in eastern Montana. Mid-Rivers initiated CLEC service in Terry in 1997 by constructing new outside plant, and offers a combination of modern, reliable services including DSL, Internet, ITV to the school and CLASS, together with a local presence. Ninety percent of the subscribers converted to Mid-Rivers in the first year. Approximately 97% of the 317 residence lines and 118 business lines in Terry are Mid-Rivers subscribers. Mid-Rivers has been designated an ETC in Terry. Mid-Rivers was able to obtain almost the entire subscriber base because of the superiority of its service compared to Qwest, which has long relegated Terry and other rural areas to telecommunications backwaters.

Mid-Rivers should be designated the ILEC for Terry because it meets the requirements of Section 251(h)(2):

- (a) It has a comparable position in the area to the ILEC.
- (b) It has substantially replaced the ILEC
- (c) Treatment of Mid-Rivers as the ILEC is consistent with the public interest, convenience and necessity and the purposes of Section 251.

Record:

Comments in support of Mid-Rivers' Petition were filed by Rural Independent Competitive Alliance ("RICA"), the National Telecommunications Cooperative Association ("NTCA") and John Staurulakis, Inc. ("JSI"). An opposition was filed by Western Wireless Corporation. After close of the comment period, Qwest filed its comments as an *ex parte* letter seeking to delay Commission action by proposing that the Commission first conduct a Notice of Inquiry before acting on Mid-Rivers' Petition.

Issues

- (a) **Study Area Waiver.** Western Wireless and Qwest oppose the petition and claim to be concerned that if, after grant of the petition, the Commission also allows Mid-Rivers to include Terry in its study area, then any subsequent competitive carrier seeking ETC designation in Terry would be required to serve the entire Mid-Rivers study area and would be required to make a public interest showing. In addition, the opponents

claim there could then be changes in the form of rate regulation and **USF** support. Qwest asserts Mid-Rivers should continue to receive the same support as Qwest.

Issues regarding the implications of a study area waiver are premature at best. There are no pending ETC requests for Terry by Western Wireless or any other carrier. Although Mid-Rivers intends to apply for a study area waiver upon grant of this petition, the petition is not contingent upon grant of such a waiver and all interested parties will have the opportunity to raise any relevant comments in the waiver proceeding. Any other ETC applicant will have the right to request that a different service area be designated.

Mid-Rivers believes, however, that the current rules specifying that all ETCs receive the same per line USF support are seriously flawed ~~from~~ a public policy perspective and are not competitively neutral. Because all ETCs are not similarly situated, the current rules result in support that is not sufficient for some ETCs, and a windfall for others. Both results are in conflict with the Act. The current reexamination of the “portability” rules should not delay action on Mid-River’s petition because Mid-Rivers’ request for ILEC designation is not conditioned upon any subsequent Commission action.

- (b) *Section 251(f) Exemption.* Western Wireless and Qwest also object that grant of ILEC status to Mid-Rivers in Terry would allow Mid-Rivers to assert its Section 251(f) exemption from the requirements of Section 251(c).

The rural exemption issue can and should be addressed in accordance with the relevant provisions of Section 251(f)(1)(B) if, and when, a competitor seeks such ~~an~~ interconnection. There ~~are~~ currently no such requests. Congress contemplated that some CLECs would supplant the incumbent and become ILECs, without any indication that such new ILECs should not be permitted if they would meet the definition of **a rural** telephone company.

- (c) *Area of Designation.* Qwest asserts that before acting on Mid-Rivers’ petition, the Commission must decide whether the statute allows Mid-Rivers to be designated as the ILEC in Terry alone, or throughout the area in which it is designated a competitive ETC.

This issue borders on the frivolous. There is no basis in the statute **for this** assertion, nor any basis in fact. Consideration of this question would unnecessarily delay action on Mid-Rivers’ petition. The prerequisites for ILEC status include substantial replacement; ETC status requires only holding out to provide the supported services.

- (d) *Status of Qwest after designation of Mid-Rivers.* Qwest claims that before it acts on Mid-Rivers' petition, the Commission must resolve the question of whether Qwest would remain an ILEC if the petition is granted.

There is no reason to conduct a separate proceeding and delay action on Mid-Rivers' petition. If the Commission determines that Qwest's status in Terry changes as a result of grant of the petition, it can so state in its decision. The Act provides Qwest an opportunity to withdraw **its** ETC status from Terry, *to* which Mid-Rivers would not object, and would consider purchase of Qwest's facilities

Conclusion

Mid-Rivers requests that the Commission act promptly on its petition consistent with the intent of Congress for situations in which the incumbent carrier is supplanted by a new entrant.

Approved CETC Study Areas

1Q2003			
State	Study Area Name	Rural	Total High Cost
MS	Cellular South License, Inc.	N	
PR	Centennial PR Operations Co	N	
ND	Western Wireless	R	\$9,367,440
AZ	Smith Bagley, Inc.	R	\$9,175,803
MS	Cellular South License, Inc.	R	\$8,923,560
WA	UNITED STATES CELLULAR	R	\$6,817,608
SD	Western Wireless (Pine Ridge)	R	\$5,907,768
NV	Western Wireless	R	\$3,698,752
KS	Western Wireless (non-RTC s	R	\$3,251,940
TX	Western Wireless	R	\$3,100,632
IA	Midwest Wireless Iowa, LLC	R	\$2,964,408
WY	Western Wireless	R	\$2,622,064
NM	Western Wireless	R	\$2,215,164
WY	Western Wireless	N	\$1,246,320
CO	Northeast CO Cellular-Disagg	R	\$1,211,544
CO	Northeast Colorado Cellular, I	R	\$1,102,140
TX	Western Wireless	N	\$845,349
GU	Guam Cellular and Paging, Inc	R	\$643,936
AI	GCI - Disaggregated	R	\$743,374
NY	RFB Cellular, Inc.	R	\$634,260
WA	RCC Minnesota, Inc.	R	\$600,291
MT	Mid-Rivers Tel Coop	N	\$596,460
MI	RFB Cellular, Inc. - Disaggreg	R	\$589,032
NM	Smith Bagley	R	\$517,136
TX	Cumby Tel Coop Inc	N	\$514,236
NY	MC Metro Access Transmissio	N	\$412,128
MN	Western Wireless	R	\$378,431
TN	Ben Lomand Communications	R	\$305,928
TX	Santa Rosa Tel Coop	N	\$297,048
VO	Mark Twain Communications (R	\$288,699
IA	Western Wireless Corp	R	\$267,816
NV	Highland Cellular, Inc.	N	\$231,492
WV	FiberNet, LLC	N	\$190,776
30	Western Wireless	R	\$171,084
IA	City of Hawarden dba HITEC	R	\$124,944
JK	SAGE	N	\$106,032
IA	South Slope Cooperative	R	\$86,976
VO	ExOp of Missouri, Inc.	R	\$68,340
KS	Western Wireless - Disaggreg	R	\$82,592
IA	WAPSI Wireless, LLC	R	\$55,610
AL	Pine Belt Cellular, Inc.	N	\$45,021
IA	Heart of Iowa Communication	R	\$43,200
TX	W T SERVICES, INC (WTS)	N	\$41,844
VD	HTC Services, Inc.	R	\$41,026
WY	SilverStar Tel - WY	N	\$39,780
VA	Washington RSA No 8 Limite	R	\$18,208
VM	Leaco Rural Telephone Coop	R	\$35,916
IA	FOREST CITY TELECOM	R	\$13,396
IA	Can Creek Telecommunications	R	\$30,072
TX	XIT TELECOMMUNICATIONS	N	\$29,220
IA	Omnitel Communications	R	\$28,198
IA	Farmers & Business Men's Te	R	\$18,960
IA	MANNING MUNICIPAL COMM	R	\$12,801
IA	HARLAN MUNICIPAL UTILITI	R	\$12,801
IA	LOUISA COMMUNICATIONS	R	\$11,568
IA	TCA	R	
IA	LOST NATION-ELWOOD	R	
IA	INDEPENDENT NETWORKS	R	
IA	GRUNDY CENTER COMM	R	
IL	Diverse Communications, Inc.	R	
MO	Fidelity Communications Servi	N	
TX	GCEC Technologies	N	
IA	REINBECK MUNICIPAL UTILI	R	
MN	Western Wireless - Disaggreg	R	
IL	ONEIDA NETWORK SERVIC	R	
IA	LAURENS MUNICIPAL UTIL	N	
IA	Iowa Wireless Services L.P.	R	
IA	MAC WIRELESS, LLC	R	
IA	Southeast Wireless, Inc.	R	
IA	Cooperative Telephone Comp	R	
IA	Olin-Morley Wireless	R	
IA	Montezuma Mutual Telephone	R	
IA	Sharon Telephone Company	R	\$0
IA	Wellman Cooperative Telepho	R	\$0
IA	Northeast Iowa Telephone Co	R	\$0
IA	Community Digital Wireless, L	R	\$0
IA	South East Iowa Wireless, LLC	R	\$0
IA	Cedar County PCS, LLC	R	\$0
IA	Brooklyn Mutual Telephone Co	R	\$0
TX	Nortex Telecom, LLC	N	\$0
TX	Sage Telecom of Texas, L.P.	N	\$0
WA	Eastern Sub-RSA Limited Par	R	\$0
WI	CTC COMM	R	\$0
WV	Gateway Telecom dba Stratus	N	\$0
			\$106,624,022

4Q2002			
State	Study Area Name	Rural	Total High Cost
MS	CELLULAR SOUTH LICENSE	N	\$29,011,36
PR	CENTENNIAL PCS OPER	N	\$9,466,10
AZ	SMITH BAGLEY	R	\$7,065,28
WA	UNITED STATES CELLULAR	R	\$6,258,74
CO	NE COLORADO CELLULAR	R	\$2,177,37
MI	RFB CELLULAR	R	\$1,115,11
GU	GUAM CELLULAR	R	\$713,43
WA	RCC HOLDINGS	R	\$563,22
SD	WESTERN WIRELESS	R	\$507,74
MT	MID-RIVERS TEL COOP	N	\$475,99
TX	CUMBY TEL	N	\$467,85
WI	CTC COMM	R	\$414,32
NY	MC METRO	N	\$383,14
MN	WESTERN WIRELESS	R	\$341,40
TN	BEN LOMAND COMM	R	\$316,40
TX	SANTA ROSA TEL	N	\$251,25
AK	GCI	R	\$165,45
NV	WESTERN WIRELESS	R	\$176,96
NM	SMITH BAGLEY	R	\$169,99
TX	WESTERN WIRELESS	R	\$166,31
WV	FIBERNET LLC	N	\$145,748
MO	MARK TWAIN COMMUNICATI	R	\$127,88
MT	INTERBEL TEL COOP	R	\$127,471
KS	WESTERN WIRELESS	R	\$110,25
IA	HAWARDEN MUNICIPAL UTI	R	\$92,70
IA	SOUTH SLOPE COOPERATI	R	\$85,77
IA	HEART OF IOWA COMM	R	\$82,901
TX	W T SERVICES, INC	N	\$42,12
NO	HTC	R	\$39,81
WY	SILVER STAR TEL CO	N	\$36,92
IA	FOREST CITY TELECOM	R	\$33,31
IA	COON CREEK TELECOMMUN	R	\$29,18
TX	XIT TELECOM & TECH	N	\$29,011
IA	OMNITEL COMMUNICATION	R	\$26,91
IA	F & B COMMUNICATIONS	R	\$18,924
IA	MANNING MUNICIPAL COMM	R	\$12,26
IA	LOUISA COMMUNICATIONS	R	\$12,06
ND	WESTERN WIRELESS	R	\$10,70
IA	HARLAN MUNICIPAL UTILI	R	\$10,65
IA	LOSTNATIONELWOOD	R	\$8,49
IA	INOEPNOENT NETWORKS	R	\$8,184
IL	DIVERSE COMMUNICATION	R	\$6,744
IA	GRUNOYCENTER COMM	R	\$6,72
AO	FIDELITY COMMSVCS I	R	\$5,856
JK	SAGE	N	\$5,652
IA	REINBECK MUNICIPAL UTILI	R	\$4,260
IA	TCA	R	\$4,176
IL	ONEIDA NETWORK SERVIC	R	\$3,864
IA	LAURENS MUNICIPAL UTIL	N	\$0
TX	NORTEX TELCOM	N	\$0
TX	SAGE TELECOM	N	\$0
W	STRATUSWAVE	N	\$0
			\$61,316,135

3Q2002			
State	Study Area Name	Rural	Total High Cost
MS	CELLULAR SOUTH LICENSE	R	\$27,831,22
PR	CENTENNIAL PCS OPER	N	\$15,089,85
AZ	SMITH BAGLEY	R	\$17,145,50
WA	UNITED STATES CELLULAR	R	\$8,082,60
CO	NE COLORADO CELLULAR	R	\$1,910,55
MI	RFB CELLULAR	R	\$945,97
NY	MC METRO	N	\$651,09
MT	MID-RIVERS TEL COOP	N	\$475,86
TX	CUMBY TEL	N	\$470,56
SO	WESTERN WIRELESS	R	\$405,51
MN	WESTERN WIRELESS	R	\$340,66
TN	BEN LOMAND COMM	R	\$282,86
TX	SANTA ROSATEL	N	\$254,50
AK	GCI	R	\$170,05
WV	FIBERNET LLC	N	\$145,74
NM	SMITH BAGLEY	R	\$141,91
TX	WESTERN WIRELESS	R	\$127,94
NV	WESTERN WIRELESS	R	\$125,29
MT	INTERBEL TEL COOP	R	\$122,34
MO	MARK TWAIN COMMUNICATI	R	\$108,90
IA	HAWARDEN MUNICIPAL UTI	R	\$96,72
IA	SOUTH SLOPE COOPERATI	R	\$96,120
WI	CTCCOMM	R	\$91,500
KS	WESTERN WIRELESS	R	\$89,136
IA	HEARTOFOIOWACOMM	R	\$56,988
IA	FOREST CITY TELECOM	R	\$1,452
IA	COON CREEK TELECOMMUN	R	\$35,148
WY	SILVER STAR TEL CO	N	\$115,148
IA	OMNITEL COMMUNICATION	R	\$34,584
T I	XIT TELECOM & TECH	N	\$31,584
TX	W T SERVICES, INC	N	\$29,628
IA	F & B COMMUNICATIONS	R	\$21,912
IA	MANNING MUNICIPAL COMI	R	\$14,760
IA	INDEPENDENT NETWORKS	R	\$11,004
IA	LOSTNATIONELWOOD	R	\$10,056
VO	FIDELITY COMM SVCS I	R	\$9,768
IA	HARLAN MUNICIPAL UTILITI	R	\$19,021
ND	WESTERN WIRELESS	R	\$7,982
IA	GRUNDY CENTER COMM	R	\$6,732
IL	ONEIDA NETWORK SERVIC	R	\$13,780
SU	GUAM CELLULAR	R	\$0
IA	LAURENS MUNICIPAL UTIL	N	\$0
TX	NORTEX TELCOM	N	\$0
TX	SAGE TELECOM	N	\$0
WV	STWITUSWAVE	N	\$0
			\$63,591,828

Western Wireless

State	USAC Working Loops		
	1Q03	4Q02	3Q02
CO	115		
IA	2,221		
KS	11,700	235	235
MN	912	929	929
ND	45,331	18	18
NM	19,645		
NV	12,401	505	505
SD	30,108	1,440	1,440
TX	48,095	1,377	1,377
WY	6,147		
Tot	176,675	4,504	4,504